



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.1972 of 2015

WEB COPY

Muniyan

... Appellant / Petitioner

versus

The Managing Director,
Tamil Nadu State Transport Corporation,
Salamedu,
Vazhutha Reddy,
Villupuram - 605 602.

... Respondent / Respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.07.2014 made in M.C.O.P.No.472 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Court, Kallakurichi.

For Appellant	:	Mr.Selvam
For Respondent	:	Mr.P.Paramasivadoss

JUDGMENT

The claimant, Muniyan, aged about 53 years, a Mason and doing agriculture work, earning a sum of Rs.15,000/- p.m. met with an accident on 07.04.2010 in which he sustained injuries. Therefore, he filed a claim petition in M.C.O.P.No.472 of 2012 before the Motor Accident Claims Tribunal, III Additional District and Sessions Court, Kallakurichi, claiming compensation of Rs.5,00,000/-

2. The Tribunal, on appreciation of oral and documentary evidence, awarded a sum of Rs.15,000/- as compensation payable by the Transport Corporation with interest 7.5% p.a. from the date of petition till the date of deposit.

3. Challenging the said award, the claimant has filed this appeal, contending that though the claimant suffered amputation below the knee, the Tribunal has not awarded any disablement compensation and awarded only a sum of Rs.15,000/-, which is very meagre and inadequate.

4. When the matter is taken up today, the claimant is brought before this Court by his son Mr.M.Sakthivel. The counsel representing the respondent had an opportunity to see the claimant and it is evident that one of the leg of the



claimant has been amputated.

5. The discharge summary has also been filed, which shows the date of admission as 07.04.2010 and date of discharge as 20.04.2010 and it is stated that there is a crush injury over the right foot. During discharge, the claimant has been advised to come again for review after 15 days. Therefore, it is evident from the record that the claimant has suffered amputation on account of the accident. A perusal of the Accident Register Copy issued by the Government Hospital, Salem, reveals that amputation has been done below knee and that the injury suffered by the claimant is grievous in nature.

6. Unfortunate that the Tribunal has treated the injury as a simple injury just because the Doctor who issued the disability certificate has not been examined. There may be cases where it is not possible for the court to assess the disability without medical evidence. But, nature of the case is such that it is not necessary to have the evidence of doctor when the nature of disability can be understood with a naked eye. The amputation as such is an injury which is deemed to result in permanent disablement. Under such circumstances, the Court should have awarded adequate compensation treating the injury as a grievous injury resulting in permanent disablement.

7. The grievance of the learned counsel for the respondent Transport Corporation is that x-ray has been taken on the day on which certificate has been issued and that the certificate has not been issued by the Doctor, who treated the patient.

8. Be that as it may. In many cases, the Doctors, who issue the disability certificate, examine the patient only for the purpose of issuing certificate. In the case on hand, x-ray has been taken on the date when the disability certificate has been issued. Therefore, it is clear that the purpose of taking the x-ray is for the purpose of obtaining the disability certificate and not for the purpose of taking treatment. Just because the doctor did not treat the patient, it does not mean that the doctor is not competent to issue the disability certificate. So long as there is no dispute regarding the disability certificate and the certificate being authentic, the disability certificate issued by the Doctor cannot be rejected on the ground that the doctor, who issued the disability certificate has not treated the injured person. Considering the disability certificate issued by the Doctor, this Court is of the considered view that disability compensation should have been awarded to the claimant or multiplier method ought to have been adopted for calculating loss of earning capacity.

9. The injured has suffered amputation below the knee. As per the disability certificate issued, the claimant has suffered 70% disability. The injured was working as a Mason and doing agriculture work. Due to the amputation below the knee,



his chances of earning an income and eking a livelihood gets substantially reduced. It would be highly impossible for him to earn. Hence, the disability has to be treated as 100% functional disability. Taking the monthly income of the deceased as Rs.6,500/- as per the ratio laid down in the decision reported in Syed Sadiq vs. United India Insurance Co. Ltd., reported in 2014 (2) SCC 735, and adopting the multiplier of '5', and functional disability assessed at 100%, the disablement compensation is quantified would at Rs.3,90,000/- (Rs.6,500 x 12 x 5 x 100%).

10. So far as other heads are concerned, namely, medical expenses, transport charges, cost of attendant and pain and sufferings are concerned, no amount has been awarded by the Tribunal. In the facts and circumstances of the case and considering the injuries sustained by the claimant and the period of hospitalisation and other attendant circumstances, this Court awards a sum of Rs.50,000/- (considering future medical expenses also), Rs.10,000/-, Rs.25,000/-, and Rs.50,000/-, under the above heads which would be a just and reasonable compensation.

11. Accordingly, the Civil Miscellaneous Appeal is allowed, enhancing the compensation from Rs.15,000/- to 5,25,000 payable by the respondent Transport Corporation along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. However, there shall be no order as to costs.

12. The Transport Corporation is directed to deposit the compensation enhanced by this Court above, viz., Rs.5,25,000/-, along with interest at the rate of 7.5% p.a., less the amount, if any, already deposited, from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter. The claimant shall pay the Court Fee for the enhanced compensation.

Sd/-
Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

ogy/GLN



To

1. The Motor Accident Claims Tribunal,
III Additional District and
Sessions Court, Kallakurichi.

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Copy TO

The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.P.Paramsivados, Advocate SR.No.4521

C.M.A.No.1972 of 2015

KS (CO)
GN(27/08/2018)